

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 29 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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CHINUBHAI CHANDULAL SHAH

Versus

STATE OF GUJARAT

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Appearance:

MR KB PUJARA for Petitioner

MR SH PATEL, ASSTT. GOVT PLEADER for Respondent No. 1

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 04/08/1999

ORAL JUDGEMENT

1. Rule. Mr.S.H.Patel, learned Assistant Government Pleader waives service of rule on behalf of respondent. With the consent of the learned Advocates, the petition is finally heard today.

2. The petitioner who claims to be a Freedom Fighter has filed this petition to claim pension and other benefits as freedom fighter with effect from the date on

which the Scheme being Freedom Fighters' Pension Scheme came into operation. The petitioner has averred in the petition that he has taken part in the Quit India Movement of 1942. He was arrested by the police and was kept in custody from 14/9/1942 to 28/9/1942. The petitioner has furnished particulars of two criminal cases filed against the petitioner being Criminal Case No.16/42-43/26-9-1942 for affixing posters and Criminal Case No.27/42-43/2-11-1942 for participation in strike. The petitioner has produced the extract of the register of the criminal cases of the Magistrate Court, at Mehsana. Perusing the same, it appears that an offence was registered against the petitioner as well as one Naranbhai on 25th October 1942 and the petitioner was arrested and produced before the Magistrate on the same day. The Magistrate has entered the case on 26/10/1942. Column No.14 of the said extract shows that the petitioner was released on bail. One more extract of the said register is produced by the petitioner wherein it appears that the petitioner was involved in the offence being criminal case No. 157/42-43. Normally, it is not possible for anybody to produce old records. However, in the instant case, the petitioner is in a position to produce the extracts of the criminal cases in which he was involved. The petitioner has produced the said documents before the Collector, Mehsana alongwith the application dated 13/8/1990 in the prescribed form including the certificate issued by Ex-M.L.A. of Baroda State - Mr. Bhogilal Nathalal Shah and Ex-M.L.A. - Mr. Purshottamdas Ranchhoddas Patel. It appears that the Collector, Mehsana arranged meetings on 8/8/1991, 30/9/1991, 20/1/1992, 10/2/1992, 7/3/1992, 9/3/1992 and 25/6/1992 for considering the applications of the petitioner and other freedom fighters for pension from the discretionary funds. According to the petitioner's say, no decision was taken by the Collector and therefore, he had no other remedy, but to file the present petition.

3. It is the case of the respondent in the affidavit in reply that the petitioner was already informed by the office letter dated 30/11/1992 that his claim to get the pension as a freedom fighter is rejected by the State Government. It is further contended that the Government vide its letter No. SNS/1092/4231-13/147/5.1 dated 9/11/1992 and another letter No. MAG/VASHI/9518 dated 30/11/1992, has rejected the claim of the petitioner to get the pension as a freedom fighter. Even though an averment is made that both the aforesaid letters are annexed as Annexure 'I' and 'II' to the affidavit, they are not annexed. Mr. Patel, learned AGP appearing for

the respondent State has frankly stated that those letters are not annexed alongwith the affidavit and at present, he is not having the copies of the same. Mr. Pujara, learned advocate appearing for the petitioner has also stated that the petitioner has not been communicated with the said two letters till this date.

4. Be that as it may, facts remain that the case of the petitioner has not been appreciated as it ought to have been, assuming that a decision is taken to deny petitioner pensionary benefits. In view of the material on record, I am of the opinion that no adverse decision could have been taken against the petitioner. In view of the extracts of the register of the criminal cases registered against the petitioner, it is clear that the petitioner has participated in the fight for freedom and has suffered imprisonment. Apart from that, the Collector, Mehsana has honoured the petitioner as a freedom fighter on 15/8/1972, as can be seen by the letter dated 12/8/1972 issued by the office of the Collector, Mehsana which is annexed to the petition. Not only that, the petitioner was also given a certificate by the Collector, Mehsana showing him to be a freedom fighter. The petitioner was often called by the Collector to consider his case for pension. It is difficult to understand the stand taken in the matter by the respondent Collector. The respondent by honouring petitioner as a freedom fighter openly in public functions virtually treated petitioner as a freedom fighter. However, when question of giving benefits as a freedom fighter arose, it is denied in the affidavit. The material produced in the petition by the petitioner, in my opinion, is sufficient making him entitled to get the pension as a freedom fighter as provided in the freedom fighters' pension scheme and there is no reason to deny the same.

4. In view of this, the petition is allowed. The decision denying the petitioner pension and other benefits as a freedom fighter, if any, is bad and illegal and the petitioner is entitled to get the pension and other benefits as a freedom fighter as are being paid by the State Government to all other freedom fighters under its Freedom Fighters' Pension Scheme. In view of the fact that the petitioner has been agitating for his cause since 1972, in my opinion, the petitioner would be entitled to get the benefits of pension and other benefits with effect from 15th August 1972. The respondent is directed to calculate the monetary benefits together with interest at the rate of 12% per annum with effect from 15th August 1972 till this date within four

weeks from today and to pay the same to the petitioner within two weeks thereafter and also continue to pay thereafter. Direct service is permitted.

AUGUST 04, 1999 [ K.R.VYAS, J. ]

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